

(2018) 04 P&H CK 0358

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1052 Of 2011 (O/M)

State of Haryana and another

APPELLANT

Vs

Sukhbir Singh Goyat

RESPONDENT

Date of Decision : 04-04-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 151
Constitution of India, 1950 — Article 227

Citation : (2018) 04 P&H CK 0358

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : Pritam Saini, R. K. Malik, Gunjan Mehta

Final Decision : Disposed off

Judgement

Kuldip Singh J.

State of Haryana as well as Samir Mathur, IAS, Principal Home Secretary, Haryana, has filed this revision under Article 227 of Constitution of India

for setting aside order dated 22.11.2010, passed in the executing proceedings by the learned Additional Civil Judge (Senior Division), Hisar, whereby in

view of observations of this High Court, respondents were directed to change the date of birth of decreeholder in the service records, as per

matriculation certificate, which is issued to the applicant, after correction as a result of decree of declaration dated 5.6.2008 for changing the date of

birth from 15.4.1964 to 15.12.1967. It was directed by learned Additional Civil Judge (Senior Division), Hisar, that the date of birth be henceforth

changed and recorded as 15.12.1967 in service records of the applicant within fifteen days from the date of passing of the order dated 22.11.2010.

Brief facts of the case which are necessary for examining the controversy are

that Sukhbir Singh Goyat, now working as District Attorney in the office of Director General, State Vigilance Bureau, Panchkula, had filed civil suit dated 26.9.2000 in the Court of the learned Additional Civil Judge (Senior Division), Hisar, against Board of School Education, Haryana, for declaration and mandatory injunction claiming that his date of birth is infact 15.12.1967 instead of 15.4.1964, as mentioned in the matriculation certificate, issued by defendant and his date of birth should be corrected. In the said suit, defendant Board was served, but did not appear. Accordingly, ex parte evidence was recorded and suit was decreed on 5.6.2008 against Board of School Education, Haryana.

It also comes out that in the meanwhile, on 26.7.2000, i.e. before filing of civil suit, plaintiff Sukhbir Singh Goyat had applied for the post of District Attorney and he ultimately joined on 8.12.2000 which means that a few months after applying for the post, he had filed civil suit and he had joined the post under the Government after two and a half months of filing of the suit. After decision of civil suit, plaintiff moved his department for correction of his date of birth in the service records, vide his representation dated 21.8.2008. The said representation was rejected on 9.9.2010, against which

petitioner Sukhbir Singh Goyat filed CWP No. 5633 of 2010 against State of Haryana and Director General of Prosecution, Haryana. The said petition came to be heard before the Single Bench of this Court which passed the following order, vide order dated 6.9.2010 :-

' The petitioner has already obtained the degree by civil court. Thereafter, his date of birth is changed in the matriculation certificate. The Government has rejected the claim of petitioner only on the ground that he had approached late for correction of his date of birth in service record. The petitioner can seek execution of decree passed by the civil Court. Counsel seeks permission to withdraw the present writ petition to approach the civil Court for execution of the decree.

Ordered accordingly.'

I have heard the learned counsels for the parties and have also carefully gone through the file.

On the basis of said order though, present petitioners were not party to the civil suit, an execution was filed against them, in which impugned order was passed.

On behalf of State, it has been argued that since petitioners were not party to civil suit, the order could not be executed against them. The order was mere direction to correct the date of birth by School Education Board which they have done. In the said case, General Public was not party. Though, respondent-decreeholder had joined the department just after two and a half months of filing of suit, but in service records, he mentioned his date of birth as 15.4.1964 and did not inform the department that any litigation regarding date of birth is pending. Since the School Education Board has no interest in the matter, therefore, they did not contest the matter and the decreeholder was successful in obtaining the ex parte decree.

The learned State counsel has argued that since present petitioners were not party to civil suit and there was no order that his date of birth in service records should be corrected, therefore, department was competent to consider the representation of respondent decreeholder on merits as per rules and decided the same which has been done in this case. On the other hand, the learned senior counsel for respondent has argued that first of all, there is no sanction to file present petition. Reliance has been placed upon Standing Order dated 18.5.2010 (Annexure-R-3) in which under Clause 9, for institution or withdraw of civil or criminal proceedings against Gazetted officers, sanction of Chief Minister is required.

I am of the view that it is not a civil suit. It is a revision against adverse order, passed by the Executing Court. First of all, the learned State counsel being the law officer of the State has implied authority to challenge the adverse order, passed against State. It is not a case of filing of civil and criminal case. Hence, the standing orders are not applicable. Even otherwise, Mr. Samir Mathur, IAS, Principal Home Secretary to Government of Haryana, has been made party in personal capacity and, therefore, he could file revision in personal capacity. Moreover, the learned State counsel has pointed out that sanction of Governor is there to file revision. Therefore, I am of the view that revision is filed by a competent person and is maintainable.

Now, coming to merits of the case, the law point will arise as to whether a decree obtained against Education Board in present case could be executed against department or not ?

The order passed by Single Bench of this Court shows that it was suggested to

petitioner that he can seek execution of decree passed by a civil Court.

However, it was nowhere directed that Executing Court shall order correction of date of birth in service records of DH. However, the Executing

Court took it as direction to order correction of date of birth in service records of decreeholder.

I am of the considered opinion that since the department was not deliberately made party to civil suit for the fear that it may contest the same, the

decree passed against Education Board, referred above, is not binding on the department and the department can independently examine the matter

and decide it. The only remedy for the petitioner was to approach either the civil Court or this Court by way of writ petition to challenge the said order

and it was for the Court to decide as to whether the order passed by the department is justified or not. It is to be further noticed that Sukhbir Singh

Goyat (plaintiff decreeholder) is stated to have done his matriculation in 1981. As per his original date of birth i.e. 15.4.1964, he did his matriculation at

the age of 17 years which means that he was at the age of 6/7 years when he got admission in First class. Now, if the date of birth is to be taken as

15.12.1967, he will get admission in First class in the month of March/April, 1971, as at the time of matriculation, his age will come to 13 years and

about 8 months which would mean that he was in the first class at the age of three years and eight months. This fact is required to be examined either

by the department or by the Court as to whether same is possible? There is growing tendency on the part of Government employee to get their date of

birth changed, so as to become younger by years and continue in service for a longer period.

The learned senior counsel for respondent has relied upon the authority of Apex Court in Updesh Kumar etc. etc. Versus Prithvi Singh and others etc.

etc., AIR 2001 Supreme Court 703. The case was regarding allotment of retail outlet dealership by Oil Corporation.

In another authority of Madras High Court in S. Selvavinayagam Versus State of Tamil Nadu and another, 1986 LIC 1239, it was a writ petition

regarding correction of date of birth and was not a case where the Executing Court passed the order, correcting date of birth against department

which was not party to case.

Further reliance has been placed upon authorities of Andhra Pradesh High Court

in N Sanyasi Rao Versus High Court of Andhra Pradesh, 2002 (5)

SLR 62, K. Madhadeva Sastry Versus Director, Post Graduate Centre, Anantapur. Reliance has also been placed upon authorities of this Court in

Dimpy Sharma Versus State of Punjab, 2006 (3) SCT 345 and Executive Engineer, PWD (B and R) Provincial Division No. 2, Sirsa Versus

Rameshwar Dass and others, arising out of CR No. 2554 of 2016, decided on 7.4.2016.

In none of authorities, it was the case that in the execution filed against a person who was not a party to suit, such correction of date of birth in service

records was ordered. Therefore, said authorities are not attracted in present case.

I am of the view that Executing Court misread the order of this Court as a direction by this Court to order the correction of date of birth in service

records of decreeholder. It appears from order dated 6.9.2010 that this Court suggested to petitioner-decreeholder as to why petitioner is not seeking

execution of decree, passed by civil Court and for this, the counsel immediately withdrew the petition to approach the civil Court for execution of

decree. As held earlier, since present petitioners were not party to civil suit and were deliberately not made party and had reported particular date of

birth at the time of applying/joining Government service, therefore, in execution of decree against Education Board, present petitioners could not be

directed to correct date of birth in service records of decreeholder, so as to make him younger by three years and eight months. Consequently, present

revision has to be allowed and impugned order dated 22.11.2010 has to be set aside.

Now, further question would arise that plaintiff decreeholder Sukhbir Singh Goyat now has been rendered remediless. He filed a writ petition against

order whereby his representation for correction of date of birth was dismissed. However, due to misinterpretation of observations of this Court, the

counsel immediately withdrew the petition to file execution and in the execution, he has failed to get his date of birth corrected in service records.

I am of the view that in such circumstances, in order to do complete justice between the parties, it is required that this Court should exercise inherent

powers under Section 151 CPC, 1908, to revive CWP No. 5633 of 2010, so that it can be decided on merits.

In the peculiar circumstances of the case and to do complete justice to the

parties, CWP No. 5633 of 2010 which was erroneously withdrawn by counsel for Mr. Sukhbir Singh Goyat is revived.

CWP No. 5633 of 2010 be put up before the appropriate Bench, as per roster, after obtaining orders from Hon'ble the Chief Justice of this Court.

Consequently, revision, in view of abovenoted observations, stands allowed. Since main case has been allowed, therefore, pending application, if any, also stands disposed of.